

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

APPLICATION OF JESSAMINE-SOUTH ELKHORN)	
WATER DISTRICT FOR A CERTIFICATE OF)	
PUBLIC CONVENIENCE AND NECESSITY TO)	CASE NO. 2012-00470
CONSTRUCT AND FINANCE A WATERWORKS)	
IMPROVEMENTS PROJECT PURSUANT TO KRS)	
278.020 AND 278.300)	

ORDER

Forest Hills Residents' Association, Inc. ("Forest Hills") and its president, William Bates, have jointly moved for the establishment of a procedural schedule to permit discovery and a hearing in this matter. Contending that discovery and a hearing are unnecessary and will cause undue delay and expense, Jessamine-South Elkhorn Water District ("Jessamine-South Elkhorn District") opposes the motion. Having considered the parties' arguments, we grant the motion and establish a procedural schedule for expedited review of Jessamine-South Elkhorn District's application.

On October 16, 2012, Jessamine-South Elkhorn District tendered an application to the Commission for authorization to borrow \$1.24 million from Kentucky Rural Water Finance Corporation ("KRWFC") and for a Certificate of Public Convenience and Necessity to construct a one-million gallon elevated water storage tank on a one-acre tract of land in Jessamine County, Kentucky, which borders the Forest Hills Subdivision. Jessamine-South Elkhorn District requested a deviation from 807 KAR 5:001, Section 11(2). On October 26, 2012, the Commission granted this request and accepted the application for filing.

On the same day, William Bates and Forest Hills (“Intervenors”) moved for leave to intervene in the proceeding. They claimed to be directly and adversely affected by the location of the proposed water storage tank. They further asserted that they would present evidence on whether Jessamine-South Elkhorn District conducted a thorough review of all reasonable alternatives for the location of the above-ground water storage tank, whether Jessamine-South Elkhorn District’s decision making process in the selection of the proposed site was reasonable, and whether the proposed site was reasonable. The Commission granted this motion on November 5, 2012.

On November 9, 2012, the Intervenors moved for a procedural schedule that permitted discovery and a hearing in this matter. In their motion, the Intervenors argue that Jessamine-South Elkhorn District bears the burden of proof to demonstrate the need for the proposed water storage tank. They assert that the proposed water storage tank’s size is excessive.¹ They further note that Jessamine-South Elkhorn District has not conducted any analysis of site locations for the proposed storage tank since 2003 and, therefore, has failed to consider any change in system operation characteristics that may have occurred in the last nine years.² Finally, the Intervenors argue that, as the proposed location of the proposed water storage tank will significantly affect Mr. Bates and Forest Hills’ members, they are entitled to a hearing to present evidence in support of their position.

In its response to this motion, Jessamine-South Elkhorn District argues that the Intervenors’ special interest can be registered by public comment and that their special

¹ Intervenors’ Motion for a Hearing and Establishment of a Procedural Schedule at 2 (filed Nov. 9, 2012).

² *Id.* at 3.

interest is “clearly limited, for the purely private convenience of a small group of customers, and largely, if not completely irrelevant to a certificate of public convenience and necessity proceeding.”³ It questions whether the Intervenor can assist the Commission since their only objective is to move the location of the proposed water storage tank away from the Forest Hills Subdivision.⁴

Jessamine-South Elkhorn District further argues that no statutory requirement for a hearing exists and that a hearing will delay a decision in this matter and likely result in additional costs on its ratepayers. It states that the most favorable bid on the proposed water storage tank is scheduled to expire on December 1, 2012 and that the selected contractor has not indicated a willingness to extend its bid for more than an additional 30 days. It further states that, as the interest rate on the proposed loan is linked to market conditions, any delay in authorizing the proposed loan agreement may result in a higher rate of interest on the proposed loan.⁵

Neither KRS 278.020(1) nor KRS 278.300(1) requires the Commission to conduct a hearing on the application. KRS 278.020(1), however, provides that “the [C]ommission may in its discretion conduct for all interested parties” a public hearing on an application for a Certificate of Public Convenience and Necessity. While holding such hearing and providing for a meaningful discovery process may increase the cost of the proposed project should the application be granted, the Commission finds that the Intervenor should be afforded the opportunity to present their arguments and evidence

³ Jessamine-South Elkhorn District’s Response to Motion for Hearing at 4 (filed Nov. 16, 2012).

⁴ *Id.* at 5-6.

⁵ *Id.* at 11-12.

regarding the need of proposed facilities and the reasonableness of the proposed site for the proposed water storage tank.

While the Commission is concerned about the effect of any delay on the proposed project's cost, Jessamine-South Elkhorn District's actions lessen the weight that can be afforded these concerns. The Intervenor sought review of the proposed facilities over a year ago.⁶ At that time, Jessamine-South Elkhorn District opposed such review as premature.⁷ Moreover, despite its long-announced intentions to construct the proposed facilities at the proposed location, its efforts to obtain regulatory approvals for such construction that date to 2008, and having long been aware of the Intervenor's efforts to seek Commission review of the proposed facilities, Jessamine-South Elkhorn District made no contingency in its planning process to eliminate or ameliorate the effects of a contested proceeding before the Commission.⁸ Clearly, an application for a Certificate of Public Convenience and Necessity could have been filed either simultaneous with or before the issuance of a request for bids.

⁶ See Case No. 2011-00138, *Forest Hills Residents' Association, Inc. and William Bates v. Jessamine-South Elkhorn Water District* (Ky. PSC filed Apr. 15, 2011).

⁷ Jessamine-South Elkhorn Water District's Answer at 1 (filed May 23, 2011 in Case No. 2011-00138).

⁸ Jessamine-South Elkhorn District purchased the site for the proposed storage tank in 2004. In 2008, it obtained a legislative appropriation of \$1,000,000 to partially fund the project. On July 8, 2010, it obtained a determination from the Federal Aviation Administration ("FAA") that the proposed storage tank would not pose a hazard to air navigation. On December 30, 2011, the FAA extended this determination to June 30, 2013. Jessamine-South Elkhorn District completed the plans and specifications for the proposed storage tank in December 2010. On March 8, 2011, the Kentucky Division of Water ("DOW") approved these plans and specifications. On June 21, 2012, DOW extended the time in which construction could begin on the proposed project from one year to two years. On June 18, 2012, Jessamine-South Elkhorn District advertised for bid proposals on the proposed storage tank with such proposals to be filed no later than July 10, 2012. On July 27, 2012, it selected Caldwell Tanks, Inc. to construct the proposed storage tank. Caldwell Tanks, Inc. presently has extended the period for which its bid is effective until December 1, 2012.

The Commission is mindful of the need for prompt action on the application. The procedural schedule appended to this Order will allow for an expedited review of Jessamine-South Elkhorn District's application and permit a final decision in this matter to be rendered on or about February 1, 2013. The Commission encourages and expects the parties to use their best efforts to informally resolve any discovery disputes and to ensure an orderly proceeding. Because the review of the proposed storage facility cannot be completed within 60 days of the filing of Jessamine-South Elkhorn District's application, we find good cause exists to continue generally the application for authorization to enter the proposed loan with KRWFC to finance that facility.

IT IS THEREFORE ORDERED that:

1. The joint motion of Forest Hills and William Bates for a procedural schedule is granted.
2. The procedural schedule set forth in the Appendix to this Order shall be followed.
3. Jessamine-South Elkhorn District's application for authorization to borrow \$1.24 million from KRWFC is continued beyond the 60-day period set forth in KRS 278.300
4.
 - a. All responses to requests for information shall be appropriately bound, tabbed and indexed and shall include the name of the witness who will be responsible for responding to the questions related to the information provided, with copies to all parties of record and five copies to the Commission.
 - b. Each response shall be under oath or, for representatives of a public or private corporation or a partnership or association or a governmental agency,

be accompanied by a signed certification of the preparer or person supervising the preparation of the response on behalf of the entity that the response is true and accurate to the best of that person's knowledge, information, and belief formed after a reasonable inquiry.

c. A party shall make timely amendment to any prior response if it obtains information that indicates that the response was incorrect when made or, though correct when made, is now incorrect in any material respect.

d. For any request to which a party fails or refuses to furnish all or part of the requested information, that party shall provide a written explanation of the specific grounds for its failure to completely and precisely respond.

5. Any informal resolution of discovery disputes shall be promptly reduced to writing and filed with the Commission and served upon all parties of record.

6. Absent informal resolution of a discovery dispute, an objection or motion regarding a discovery request shall be filed at least two business days prior to the established submission date. If this deadline cannot be met, the filing party shall include a full and complete explanation for such failure in its written objection or motion.

7. The parties shall consider any request for information from Commission Staff as if ordered by the Commission.

8. Service of any document or pleading in paper form shall be made in accordance with 807 KAR 5:001, Section 3(7). Service upon a party shall be considered completed upon delivery of the document or pleading to the party or upon mailing the document or pleading to the party's address of record.

9. Any party filing a document or pleading with the Commission shall serve such document or pleading upon all other parties to this proceeding.

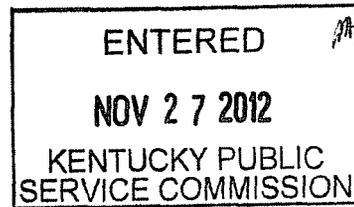
10. Any document or pleading that a party serves upon the other parties to this proceeding shall also be filed with the Commission.

11. At the hearing in this matter, each party shall limit its opening statement to no more than five minutes.

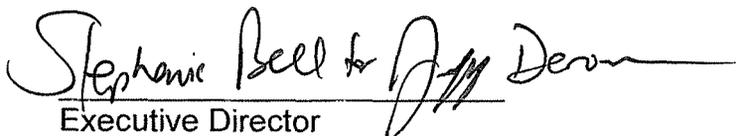
12. Pursuant to KRS 278.360, the record of the formal hearing in this matter shall be by videotape.

13. Nothing contained herein shall prevent the Commission from entering further Orders in this matter.

By the Commission



ATTEST:


Executive Director

APPENDIX

APPENDIX TO AN ORDER OF THE KENTUCKY PUBLIC SERVICE
COMMISSION IN CASE NO. 2012-00470 DATED **NOV 27 2012**

Each party may serve its first set of requests for information upon the other parties of record no later than..... 12/04/2012

Parties shall file with the Commission and serve upon the parties of record their responses to the first set of requests for information no later than..... 12/11/2012

Each party may serve its supplemental set of requests for information on other parties of record no later than..... 12/18/2012

Parties shall file with the Commission and serve upon the other parties of record their responses to the supplemental set of requests for information no later than..... 12/28/2012

Each party shall file with the Commission and serve upon the other parties of record a list of all witnesses that it intends to call at the scheduled hearing and a summary of each witness's expected testimony 01/07/2013

A telephone conference shall be held for the purpose of considering the possibility of settlement, the simplification of issues, and any other matters that may aid in the handling or disposition of this case, beginning at 9:30 a.m., Eastern Standard Time 01/09/2013

A public hearing shall be held in this matter for the purpose of taking evidence on the proposed facilities and proposed issuance of evidence of indebtedness, beginning at 10:00 a.m., Eastern Standard Time 01/10/2013

Parties may file written briefs with the Commission no later than 01/22/2013

Honorable W. Randall Jones
Attorney at Law
Rubin & Hays
Kentucky Home Trust Building
450 South Third Street
Louisville, KENTUCKY 40202

Bruce E Smith
201 South Main Street
Nicholasville, KENTUCKY 40356

Honorable Robert M Watt, III
Attorney At Law
STOLL KEENON OGDEN PLLC
300 West Vine Street
Suite 2100
Lexington, KENTUCKY 40507-1801